

OPENING

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LINES



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Off the Cuff...

Legislative Update

By Kelley Leigh Pixler, *Legislative Intern*

Most laws are effective August 6, 1999

The 44th legislative session hit the ground running on January 11, 1999. The process ran for 116 days and adjourned Sine Die on May 7, 1999. The filing of 1,187 bills set a new legislative record. Of those bills, only thirty-two percent passed both houses of the legislature. The Governor vetoed 22 measures. The remaining 353 bills became law.

During the session, the Maricopa County Attorney's Office worked closely with law enforcement agencies and others seeking passage of key legislation. We worked with legislators and staff by attending hearings, testifying and meeting with legislators regarding issues that would benefit victims, law enforcement, the criminal justice system, and public safety.

The legislative session proved to be successful and productive. A number of improvements to the criminal code relating to victim's rights, police officer personal information, and slum properties were enacted. These new laws, in addition to other significant issues, are summarized in this edition of *Opening Lines*.

Highlights include Senate Bill 1008, which allows a victim's family to address the court at the sentencing hearing in a death penalty case. The victim is permitted to discuss the impact of the murder on the murdered person's family as well as speak about the murdered person.

If a person is a victim in one case and a witness in another case with the same defendant, the person has a right to refuse an interview in the case that the person is a witness, if the cases are filed in the same complaint or indictment, consolidated for trial or occur on the same occasion, according to § 13-4433.

It is a class 5 felony under the newly enacted § 13-2401 for a person to knowingly make available on the Internet the personal information of a

See Legislative Update, page 8

Revised deadly weapon policy

By Carol McFadden

Special Assistant to the County Attorney

In recent years, a growing number of police officers have been confronted by armed suspects. To address this serious concern, the Maricopa County Attorney's Office has revised our deadly weapon policy to state:

There shall be no offer made in any case in which a deadly weapon is pointed at or discharged at peace officer acting in the peace officer's official capacity. Defendants may plead to all of the charges, including any sentencing enhancements, or proceed to trial. Deviations from this policy must have the prior approval of the Division Chief.

While this policy will result in an increase in the number of cases that proceed to trial, County Attorney Rick Romley believes that a hard stance is required for two reasons: to ensure that appropriate sanctions are brought against those willing to use deadly force against police officers and to deter others and thereby preventing future police officer injury.

Additionally, the Maricopa County Attorney's Office revised several policies relating to auto theft. Auto theft cases that are filed will be charged as Theft of Means of Transportation (the new auto theft statute), requiring the defendant to plea to a designated felony auto theft related offense, or proceed to trial. This policy change sends the statement that auto theft will be aggressively prosecuted.

Legislative Summary

PRECURSOR CHEMICALS

CHAPTER: 15 (HB 2448) ARS: 12, 32

A comprehensive bill dealing with precursor chemicals. It includes definitions including ordinary ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine product, retailer, wholesaler, sale for personal use, and suspicious transaction. (§ 13-3401).

Various criminal penalties are included ranging from a class 2 felony to a class 1 misdemeanor. They are found in §§13-3404 and 13-3404.01.

DIVERSION; DRUG COURTS

CHAPTER: 22 (HB 2344) ARS: 8, 11, 13

The county attorney, or other applicable prosecuting agency, has sole discretion to decide whether to defer or divert prosecution of an offender, either juvenile or adult.

A defendant who has participated in a previous drug diversion program, other than a juvenile program, is excluded from the statutory drug court program. A presiding superior court judge may establish a drug court program other than those defined in statute.

ATHLETE AGENTS

CHAPTER: 39 (HB 2005) ARS: 15

A new crime involving intercollegiate athletics and agents is established. Any violation of the following provisions is a class 1 misdemeanor:

- Violate the laws concerning the occupation and practice of an athlete agent.

- Accept as a client an athlete referred by and in exchange for any consideration.
- Offer or provide anything of value to an athlete that would cause the athlete to forfeit athletic eligibility.
- Cause to be published any false publication, fraudulent or misleading information concerning the business of an athlete agent.
- Give any false information or make any false promises concerning the business of an athlete agent or the employment of an athlete.
- Postdates any agent contract between an athlete agent and an athlete or designated athlete representative.

VIOLENT SEXUAL ASSAULT

CHAPTER: 92 (SB 1416) ARS: 13

Establishes a new crime, "Violent Sexual Assault" § 13-1423. A person with a historical prior felony for a sexual offense who commits any of the following offenses, involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or involving the intentional or knowing infliction of serious physical injury:

- sexual abuse
- sexual assault of a spouse
- sexual conduct with a minor
- molestation of a child.

A person who is guilty of a violent sexual assault shall be sentenced to life imprisonment and the court shall order that the person not be released on any basis for the remainder of the person's natural life. Replaces the current § 13-1406, life in prison for certain dangerous sex offenses.

DEATH SENTENCING; VICTIM IMPACT STATEMENTS

CHAPTER: 104 (SB 1008) ARS: 13

EFFECTIVE: APRIL 29, 1999: A victim may submit a victim impact statement (which is either audio, video, written or oral) to the probation officer who is obligated to consider and include this statement in his presentence report. The presentence report should include the disclosed information regarding the murdered person and the economical, physical and psychological impact of the murder on the victim and other family members.

The victim is allowed to testify at the hearing, may present information about the murdered person, and discuss the impact of the murder on the victim and other family members. The court is authorized to evaluate and consider this prescribed information but is prohibited from considering any recommendation made by the victim regarding the sentence to be imposed. A definition of victim is provided.

PSYCHIATRIC SECURITY REVIEW BOARD

CHAPTER: 110 (HB 2022) ARS: 13

A person placed under the jurisdiction of a psychiatric security review board may not ask for a release hearing until twenty months after the previous hearing, however, the medical director of the state mental health facility may request a release hearing at any time.

BAD CHECKS

CHAPTER: 132 (HB 2345) ARS: 13

If the defendant is alleged to have written multiple bad checks within one county and at least two of the checks are written in the same justice of the peace precinct, the county attorney may file all charges within one complaint in the precinct(s) where the most violations allegedly occurred.

ANIMALS; CRUELTY; UNLAWFUL INTERFERENCE

CHAPTER: 143 (SB 1174) ARS: 13

A person who intentionally releases an animal lawfully confined for public event, display or exhibition purposes without the consent of the owner of the animal is guilty of a class 6 felony and is liable for damages as provided for in statute. Cruelty to Animals law, § 13-2910 is expanded and certain offenses are reclassified.

A person who commits cruelty to animals is guilty of a class 1 misdemeanor if the person does any of the following:

Intentionally, knowingly, or recklessly:

1. Subjects any animal to cruel neglect or abandonment.
2. Fails to provide medical attention to prevent suffering.
3. Inflicts unnecessary physical injury.
4. Kills any animal under the custody of another person without permission of the law or the owner.
5. Recklessly subjects any animal to cruel mistreatment or interferes with, kills or harms a working or service animal.

It is a class 6 felony if the person does any of the following:

Intentionally or knowingly:

1. Subjects any animal to cruel neglect or abandonment that results in serious physical injury to the animal.
2. Subjects any animal to cruel mistreatment.
3. Interferes with, kills or harms a working or service animal without either legal privilege or consent of the owner.

It is a defense if a person uses poisons in and immediately around buildings controlled by the person for the purpose of controlling wild and domestic rodents, excluding any fur bearing animals as defined in § 17-101.

Definitions are provided for the following terms: animal, cruel mistreatment, and cruel neglect.

ASSAULT; POLICE OFFICERS; FIRE FIGHTERS

CHAPTER: 254 (HB 2447) ARS: 13

Adds common blood borne disease or other diseases to the statute providing for HIV testing of persons charged with crimes against law enforcement officers, correctional service officers, detention officers, private prison security or fire fighters. Also includes a requirement that there be reasonable grounds to believe an exposure has occurred.

The provisions in section § 36-665, which state that a search warrant for confidential communicable disease related information is prohibited does not apply to this section.

INMATE CORRESPONDENCE; PROHIBITION

CHAPTER: 281 (SB 1049) ARS: 8, 13, 31

EFFECTIVE: FROM AND AFTER JANUARY 29, 2000: PROVIDES a new victim's right in both adult and juvenile cases. Within fifteen days after sentencing the prosecutor must notify the victim, any member of the victim's family or any member of the victim's household to request not to receive mail from the inmate. The form and content of notice is included in statute (§§8-392.01 and 13-4411.01). The inmate must be notified of the request as well as sanctions for violating the request. When the Department of Corrections is notified of a defendant's violation, the department must preread all mail from the inmate in violation.

TRAFFIC VIOLATIONS; COMMUNITY SERVICE

CHAPTER: 97 (SB 1082) ARS: 28

The court may now also order the person to perform community service for violating ARS § 28-672: Accidents Involving Moving Violations. If this order is ignored the court must notify the Department of Transportation who in turn shall suspend the driver's license or permit until the order is satisfied.

A court may order the driver license be surrendered to a police officer instead of to the court if a person is convicted of reckless driving, aggressive driving or racing on a highway. In Reckless Driving and Racing on the Highway cases there is no longer a need to forward an abstract of conviction with an order of the court

ordering the driving privileges of a guilty person suspended.

IGNITION INTERLOCK DEVICES

CHAPTER: 303 (HB 2408) ARS: 9, 11, 28

A person who is convicted of a second or subsequent DUI within a sixty-month period shall be ordered by a court to equip any motor vehicle the person operates with a certified ignition interlock device for at least one year after the imposed suspension or revocation expires. A person convicted of extreme DUI may be ordered by a court to equip any motor vehicle the person operates with a certified ignition interlock device for at least one year after the imposed suspension or revocation.

A person guilty of extreme DUI or aggravated DUI must continue to provide proof of both compliance with the order to use the device and inspection of the device within every ninety days. If proof of either compliance or inspection is not submitted and the person does not request a hearing, the department shall immediately suspend the person's driver's license. A timely request for a hearing shall delay the suspension. The person's license may not be returned until after the court's decision. A temporary license shall be issued until the decision is rendered. The hearing shall be the same as a suspended license hearing. The scope of the hearing is limited to a determination as to whether a person was ordered to use an ignition interlock device and whether the required proofs of compliance were submitted.

A person whose driving privilege is restricted due to a DUI,

other unauthorized persons (such as a passenger) must neither tamper with nor circumvent the operation of the device. A violation of these provisions is a class 1 misdemeanor. In addition to other penalties the court may extend the duration of the interlock order, as it deems appropriate.

DRIVING REGULATIONS; CONFORMING LANGUAGE

CHAPTER 11; (HB 2340) ARS: 28

EFFECTIVE APRIL 1, 1999: Although there are other relevant sections, these are the sections that effect law enforcement on a daily basis.

5. § 28-672 Accidents and Moving Violations: Serious Physical Injury; Death; Penalties

Splits the statute into sections and paragraphs making it easier to cite. Committing one of the enumerated civil traffic violations causing serious physical injury is found in subsections A and B. Committing one of the enumerated civil traffic violations causing death is found in subsections C and D.

6. § 28-673 Traffic Accidents: Implied Consent: Tests

This section is the implied consent law for persons who commit a moving violation and cause a fatal or serious injury accident or who are cited for a moving violation resulting from the accident. Formerly part of § 28-1321

7. § 28-1321 Implied Consent; Test; Refusal to submit to Test; Order of Suspension: Hearing; Review; Temporary PRTMIY; Notification of Suspension

Removes the non-DUI provisions of the implied consent law and moves them to a new section, § 28-673

8. § 28-1388 Blood and Breath Tests; Violation; Classification; Admissible Evidence

Corrects a mistake from last year's legislation. If a law enforcement officer administers a duplicate breath test the suspect can arrange for any other test, not solely a breath test. The word "breath" was inserted in error last year.

PEACE OFFICER PERSONAL INFORMATION; INTERNET

(CRIMINAL CODE OMNIBUS) CHAPTER 261; (SB 1279) ARS: 8, 11, 13, 22, 31, 36, 41, 44

Although there are other relevant sections, these are the sections that affect law enforcement on a daily basis.

1. § 8-341 Disposition and commitment: Definitions

Permits the court to place a juvenile on probation for longer than a year at the time of sentencing if otherwise permissible instead of requiring a second hearing to extend probation over a year.

2. § 8-412 Victim's Right to Refuse an Interview

Provides the victim in a juvenile adjudication with the right to refuse an interview conducted by the juvenile, juvenile's attorney or an agent of the juvenile on any other case with the same defendant in which the victim is a witness if that case is filed in the same petition or consolidated for an adjudication hearing.

3. § 11-483 Records Maintained by County Recorder; Peace Officers; Confidentiality; Definitions

Requires a peace officer who is requesting confidentiality for the unique identifier and the recording date contained in indexes of

recorded instruments maintained by the county recorder or requesting the recorder to prohibit access to the officer's residential address and telephone number contained in county recorder records to include the full legal description and parcel number of the property and the recording date of each instrument in the affidavit filed requesting such action.

A request to maintain confidential information in the office of the recorder and the office of the treasurer may be filed in one affidavit.

4. § 11-484 Records Maintained by County Assessor and County Treasurer; Peace Officers; Redaction; Definition

In counties with a population of more than five hundred thousand persons a peace officer may request that the public be prohibited from accessing the officer's residential address and telephone number contained in the records and information maintained by the assessor and treasurer. The officer must request the action by filing an affidavit with the court, the required contents of the affidavit is contained within the statute. The court must find redaction of the information from the records will reduce the danger to the life or safety to the officer of another person. If granted the clerk shall file the order and affidavit with the recorder and treasurer whom in turn have ten days to restrict the information. The redaction is in effect for five years.

5. § 13-604 Dangerous and Repetitive Offenders; Definitions

A new sentencing enhancement provision is added (§ 13-604U). A person convicted of intentionally or knowingly committing aggravated assault on a police officer

while the officer is engaged in official duties, if committed pursuant to § 13-1204(A)(1) or (A)(2) shall be sentenced to imprisonment for at least the presumptive sentence and is not eligible for any early release. The definition subsection is relettered as § 13-604V.

6. § 13-604.01 Dangerous Crimes Against Children; Sentences; Definitions

Corrections in subsection L, paragraph 2 referencing the correct subsection in the child abuse statute (§ 13-3623).

7. § 13-604.02 Offenses Committed while Released from Confinement

Conforming change in subsection B regarding an enhanced sentence for a person convicted of certain offenses committed while on release status. The subsection now applies to release on any basis.

8. § 13-702 Sentencing

The aggravating circumstance of committing an offense while wearing a bulletproof vest is changed to committing an offense wearing body armor (defined in § 13-3116)

The aggravating circumstance of driving with a blood alcohol concentration of 0.18 or above is expanded to include manslaughter, negligent homicide and aggravated assault as well as murder II if committed while driving a motor vehicle.

13. § 13-905 Application by Persons Discharged from Prison

Conforming change due to the relettering of the § 13-604 definitions. In section C, dealing with restoration of right to possess a gun or firearm of a person convicted of a dangerous offense, "weapon" is changed to "gun or

firearm" to conform to the rest of the statute.

16. § 13-1204 Aggravated Assault; Classification

Creates a new aggravated assault provision, committing simple assault as defined in § 12-1203A(1) or A(3) when the person is in violation of an order of protection issued against the person pursuant to § 13-3602 or 13-3624.

17. § 13-1407 Defenses

Conforming change to subsection E in this statute dealing with defenses in sex offense cases. It is a defense to prosecution under § 13-1404 if the victim is under fifteen, changed from under fourteen. Conforms this subsection to other defenses and the age of consent.

18. § 13-1419 Unlawful Sexual Conduct; Correctional Employees; Prisoners; Classification

Statute prohibiting department of correction employees or contact prison employees from engaging in oral sexual contact, sexual contact or sexual intercourse with a prisoner or a prisoner from doing the same with an employee is expanded to include city or county jail employees.

20. § 13-1804 Theft by Extortion; Classification

Amendments to the extortion statutes in reaction to two appellate cases declaring two subsections unconstitutional. Subsection 8 is deleted and replaced by new language. An affirmative defense to three subsections is added, based upon the model penal code.

21. § 13-2401 Peace Officer Personal Information on the World Wide Web; Classification; Exception; Definitions

A new provision in law, a person cannot knowingly make available on the World Wide Web the

personal information of a peace officer if the dissemination of the information poses an imminent and serious threat to the safety of the officer or the officer's immediate family and the threat is readily apparent to the person making the information available on the web. The offense is a class 5 felony. The statute includes a good faith exception for the county recorder, treasurer and assessor. "Immediate family" and "personal information" are defined.

24. § 13-3116 Misconduct Involving Body Armor; Classification; Definition

A new offense is added to the criminal code. It is a class 4 felony to knowingly wear or otherwise use body armor during the commission of a felony. Body armor is defined as any clothing or equipment designed in whole or in part to minimize the risk of injury from a deadly weapon.

25. § 13-3411 Possession, Use or Sale of Marijuana, Peyote, Prescription Drugs, Dangerous Drugs or Narcotic Drugs or Manufacture of Dangerous Drugs in a Drug Free School Zone; Violation; Classification; Definitions

Corrects an oversight in the statute making it unlawful for a person to intentionally be present in a drug free school zone to sell marijuana, peyote, prescription-only drugs, dangerous drugs or narcotic drugs. It is now illegal to be present in the drug free school zone to transfer any of the listed classes of drugs.

27. § 13-3551 Definitions

Changes to the chapter of the criminal code covering sexual exploitation of children.

The definition of "stimulated" is modified, deleting "visual or print medium" and replacing it with "visual depiction" which is defined as: each visual image that is contained in an undeveloped film, videotape or photograph, or data stored in any form and that is capable of conversion into a visual image. The change is necessitated by new technology, especially digital and computer technology.

35. § 13-3905 Detention for Obtaining Evidence of Identifying Physical Characteristics

Updating of statute which is over twenty years old. For instance, the term "punishable by at least one year in the state prison" is replaced by "a felony." An order may be obtained from a magistrate utilizing telephonic or facsimile means, similar to a search warrant.

36. § 13-3914 Examination on Oath; Affidavits

The transcript of a telephonic search warrant is required to be transcribed only if requested by the court or any party.

37. § 13-3918 Time of Execution and Return

A search warrant may now be returned to any magistrate, not solely the issuing magistrate.

45. § 13-4433 Victim's Rights to Refuse an Interview

Provides the victim with the right to refuse an interview on any other case with the same defendant conducted by the defendant, defendant's attorney or an agent of the defendant in which the victim is a witness if that case is filed in the same complaint of consolidated for trial.

46. § 22-301 Jurisdiction of Criminal Actions

Cleans up antiquated language in statute conferring criminal jurisdiction on the justice of the peace courts. Permits a justice of the peace court to hear an assault case where a public officer is a victim if it otherwise falls within the court's jurisdiction.

51. § 41-1750 Central State Repository; Department of Public Safety; Duties; Fund; Accounts; Violation; Classification; Definitions

Last year six separate bills, which amended this section, were enacted. However, they could not be blended. This bill blends those sections.

Removes the provision criminalizing unauthorized access or release of information covered by this section and moves it to a new section, § 41-1756, therefore separating the regulatory and criminal provisions.

53. § 41-1756 Unauthorized Access to Criminal History; Classification; Definitions

The provision criminalizing unauthorized access to criminal history or use of the Arizona criminal justice information system or criminal history record information previously found in § 41-1750. Rewritten to be better understood.

54. § 44-1221 Deceptive Use of Name; Classification; Definitions

A new crime. It is unlawful, a class 2 misdemeanor, to deceive another person by misrepresenting the geographic origin or location of the person's business in the conduct of the person's business. An act or practice in violation of this section is an unlawful practice under § 44-1522 (consumer fraud, unlawful practices) and is subject to enforcement through private action and prosecution by the attorney general. ⚖️

The verdict is in...

The following cases were recently decided by the Supreme Court and pertain to officers in the field.

SEARCH OF PASSENGER'S PERSONAL BELONGINGS INSIDE VEHICLE

In *Wyoming v. Houghton*, 119 S.Ct. 1297, 143 L.Ed. 2d 408 (1997) decided by the United States Supreme Court, April 5, 1999. A Wyoming Highway Patrol officer, during a routine traffic stop, observed a syringe in the driver's shirt pocket. The driver admitted the syringe was for his drug use. The officer had the driver step out of the vehicle, followed by the two passengers. The officer then searched the passenger compartment of the vehicle, including a purse which the female passenger, Houghton, claimed was hers. Drug paraphernalia and a syringe containing methamphetamine was found inside the purse and Houghton was arrested. At trial, Houghton filed a motion to suppress the contraband as the fruit of an unlawful search. The trial court denied the motion and Houghton was convicted. The Wyoming Supreme Court reversed the conviction, based on the search of an uninvolved passenger's purse. The case was then appealed to the United States Supreme Court to clarify the legality of the search.

The United States Supreme Court held that the police officer had probable cause to believe there were illegal drugs inside the car. If probable cause justifies the search of lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search, without qualification as to ownership. The court

noted that passengers and drivers possess a reduced expectation of privacy with regard to the property they transport in cars which travel public thoroughfares, seldom serve as a repository of personal effects, and are subjected to pervasive governmental controls, including police stops, as an everyday occurrence. Further, effective law enforcement would be appreciably impaired without the ability to search evidence of criminal wrongdoing if hidden in the car, as passengers are often engaged in a common enterprise with the driver.

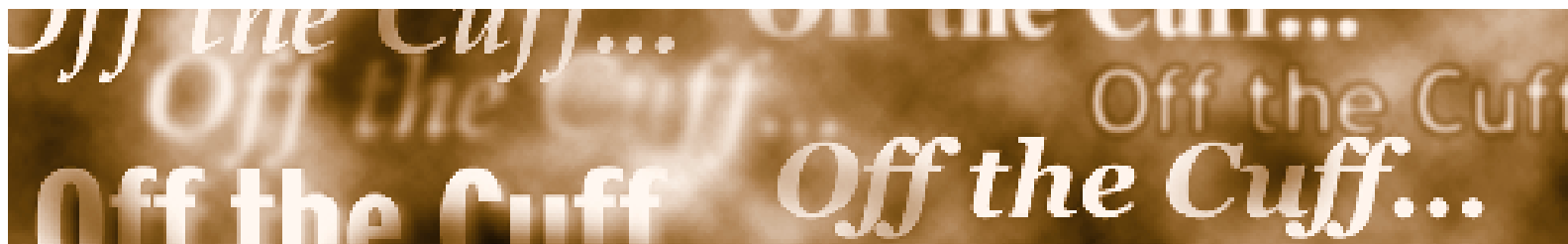
SEARCH WARRANTS AND THE INDEPENDENT SOURCE DOCTRINE

In *State v. Soto*, 287 Ariz. Adv. Rep. 58 (Ct. of App. Jan. 28, 1999) decided by the Arizona Court of Appeals, police officers learned from a confidential informant that a Hispanic male was storing thirty-five pounds of marijuana at a residence. The officers began surveying the residence. During the surveillance, one officer left to obtain a search warrant. After observing a vehicle parked in front of the house and several people going in and out of the residence, a supervisor ordered officers to "secure the residence." The officers entered the residence and detained the defendant who was attempting to flee. The defendant was handcuffed, advised of his rights and informed that the officers believed there was marijuana at the residence. The defendant admitted there were 140 pounds of marijuana, but denied

ownership. While checking the residence for occupants, one officer went into the backyard and immediately smelled a strong odor of marijuana coming from an unlocked shed. Inside of the shed were closed boxes. The officer looked inside one box which was not sealed and found marijuana. After the search warrant was issued, officers completed the search and seized five boxes of marijuana, cocaine, and drug paraphernalia. Although the warrant was signed after the initial entry into the residence, the warrant was not based upon any information gained during the entry of the house and shed.

The defendant was charged with knowingly possessing marijuana for sale in an amount greater than four pounds. He moved to suppress the marijuana as a product of an illegal search. The trial court granted the motion and the state appealed. The appellate court reversed the trial court's order, and allowed the admission of the marijuana.

The court stated that the exclusionary rule prohibits the introduction of illegally obtained evidence. The purpose of this exclusionary rule is to deter police misconduct; not to put the police and society in a worse position than they would have occupied if no violation occurred. **Thus, the independent source doctrine applies when the evidence acquired by an untainted search (pursuant to the warrant) is identical to the evidence that was unlawfully acquired. The search warrant was not tainted by any information learned during the illegal entry; rather the information came from an independent source, rendering it legitimately acquired. Therefore, the evidence was lawfully seized and need not be suppressed.** ⚖️



Legislative Update, from page 1

peace officer if the dissemination of the information poses an imminent and serious threat to the peace officer's safety or the safety of the peace officer's immediate family and the threat is reasonably apparent to the person making the information available. A peace officer may also apply to the court for an order prohibiting access to the officer's residential address and telephone numbers in records maintained by the county assessor, treasurer and recorder. The request must be filed with the court and if granted is in effect for five years, § 11-484.


It is now a class 4 felony for a person to use body armor during the

commission of a felony. This offense may be charged in addition to the underlying crime. Aggravated Assault against a police officer committed intentionally or knowingly and either using a deadly weapon or dangerous instrument or causing serious physical injury is a class two felony with a minimum flat time presumptive sentence required.

Another significant bill is Slumlord legislation, Senate Bill 1278. Many provisions of this bill were drafted by the slumlord task force headed by Maricopa County Attorney Richard Romley and Phoenix City Councilman Phil Gordon and were widely endorsed. Significant

changes to the abatement statutes greatly strengthen the ability of communities to clean up residential rental property. It is now also necessary for landlords to record ownership information with the county assessor's office.

This legislative session demonstrated that there is a strong working relationship and commitment within the law enforcement community. We at the Maricopa County Attorney's Office extend our thanks to all of you.

If you have any question or comments regarding this year's legislative session, please call Special Assistant Maricopa County Attorney Jerry Landau at 506-5781. 



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